IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

WP(C).No. 34110 of 2007(I)

AGAINST THE ORDER DATED 11/09/2007 IN IA 1409/2007 IN OS.249/2000 of MUNSIFF COURT, TIRUR
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PETITIONER:

KADHEESA, D/O. LATE AVARANKUTTY,
OOLASSERIYAKATH HOUSE, THEKKANKUTTUR AMSOM,
PULLUR DESOM, TIRUR TALUK, MALAPPURAM DISTRICT,
PIN-676805.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA

RESPONDENTS:
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1. **KUNHIPATHUMMA,**
MEDAMMAL HOUSE, THEKKANKKUTTUR AMSOM PULLUR DESOM,
TIRUR TALUK, MALAPPURAM DISTRICT-676805.

2. **MUHAMMEDKUTTY -DO- -DO-.**

3. **BEERANKUTTY -DO- -DO-.**

4. **RABIYA -DO- -DO-.**

5. **PATHIMMA -DO- -DO-.**

6. **KHADEEJA -DO- -DO-.**

7. **BUSHARA -DO- -DO-.**

8. **AZEEZ -DO- -DO-.**

9. **RASHEED -DO- -DO-.**

10. **ASKAR -DO- -DO-.**

11. KHADER,
OOLASSERI HOUISE, THEKKANKUTTUR AMSOM,
PULLUR DESOM, TIRUR TALUK, MALAPPURAM DISTRICT.

12. MOIDEENKUTTY -DO- -DO-.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/11/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 34110 OF 2007

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Dated this the 19th day of November, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P2 order passed by the Munsiff, Tirur. The suit is one for declaration and consequential injunction and the defendants have disputed about the identity of the property. The learned counsel for the writ petitioner has made available for perusal the Commissioner' sketch and report in this case. A perusal of the report would show that the property had not been measured or identified with respect to the title of the parties. But separate plots are marked as per representation made by the parties. I feel that in a declaration suit where title is involved the property has to be measured especially when identity is disputed with reference to the documents to find out who is entitled to the property or who is having title to the property. It is true that there is some delay in filing application for remitting Commissioner's plan and report. I

am informed that the suit was originally dismissed for default and subsequently restored and that has caused the delay. Whatever it may be, for a proper disposal of the case and to resolve the controversy between the parties, measurement of the property with respect to the title deeds is absolutely necessary. Therefore, I set aside the order passed by the Court below, allow the application and direct the Court below to remit the Commissioner's plan and report and the Commissioner may also be directed to note the particulars wanted by the other side and the parties can file work memo before the Commissioner.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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